DOCUMENT RESUME

ED 251 829 CS 208 487

AUTHOR Parsons, Marie
TITLE Joint Newspaper Operating Agreements.
PUB DATE Aug 84
NOTE 53p.; Paper presented at the Annual Meeting of the Association for Education in Journalism and Mass Communication (69th, Gainesville, FL, August 5-8, 1984).
PUB TYPE Reports - Research/Technical (143) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC03 Plus Postage.
DESCRIPTORS Competition; *Cost Effectiveness; Economic Climate; Economic Factors; Economic Opportunities; Efficiency; Federal Legislation; *Government Role; Labor Problems; Media Research; *Newspapers; Organizational Effectiveness; *Publishing Industry; Retrenchment; *Shared Facilities; United States History
IDENTIFIERS Antitrust Laws; *Newspaper Preservation Act 1970

ABSTRACT

The number of competing daily newspapers in American cities has dwindled until only about 50 cities boast two papers. Of the newspapers in those cities, 23 now maintain separate editorial operations but have joint printing, advertising, and circulation departments. The concept of joint operation is 50 years old, dating from the Depression years when publishers merged parts of their operations in order to survive. This strategy was not legalized, however, until 1970 when industry pressure was successful in persuading Congress to pass the Newspaper Preservation Act (NPA). The industry claimed that the savings that resulted from joint business departments would permit struggling newspapers to stay in business. Congress disliked the alternative--buy outs by the stronger papers and increasing control by chain publishers--and voted for the joint agreements provision, which amounted to an exemption from antitrust laws. Now, the weaker members of the pairs appear to be even more frail and the stronger partners are threatening to terminate the arrangements when present contracts expire. If, over time, joint operation proves to be no more than a burial policy to lay newspapers to rest with dignity, then the NPA is probably safe from attack. If, however, the newspaper industry attempts to be creative and use the antitrust exemption for other purposes, opposition to its continuation can be expected. (RBW)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)
☐ This document has been reproduced as received from the person or organization originating it.
X Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

ED251829

THE UNIVERSITY OF ALABAMA
School of Communication

Joint Newspaper Operating Agreements

Marie Parsons
Fall, 1983

for
Charles C. Self
Journalism Tutorial

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Marie Parsons

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

CS 208 487

ABSTRACT

The number of competing daily newspapers in American cities has dwindled until only about fifty cities boast two papers. Of the fifty pairs of newspapers in those cities, nearly half operate their business affairs jointly. Since the demise of the joint operation in Saint Louis, there remain only twenty-three pairs of newspaper which maintain separate editorial operations but joint printing, advertising, and circulation departments. The concept of joint operation is fifty years old--dating to the Great Depression when publishers joined to survive, but the strategy was not legalized until 1970 when the industry succeeded with a campaign to pass the Newspaper Preservation Act. Their claim was that the savings that resulted from joint business departments would permit struggling newspapers to stay in business. Congress viewed the alternative--buy-outs by the stronger papers and increasing control by chain publishers--and voted for the joint agreements provision. Now, nearly fifteen years later, the weaker members of the pairs appear to be even more frail and the stronger partners are threatening to terminate the arrangements when present contracts expire. This paper traces the development of joint agreements and asks whether the antitrust exemption is doomed to extinction along with the failed and failing newspapers.

INTRODUCTION

A joint operating agreement is a business arrangement peculiar to U.S. newspapers under which two or more separately owned newspapers may conduct their business affairs as partners while they maintain independent news and editorial operations. There are twenty-four such partnerships, involving forty-eight daily newspapers, which are permitted to jointly operate under special exemption from antitrust laws which restrict monopolistic ventures in industry in general. The special exemptions are allowed by the Newspaper Preservation Act of 1970 in which Congress approved twenty-two existing agreements and gave the U.S. Department of Justice authority to sanction additional partnerships and to supervise changes in existing joint operating agreements.[1]

The purpose of the Newspaper Preservation Act--called the Failing Newspaper Act when it was proposed--is to provide clearance for a management strategy which is opposed to fair-trade law in order to maintain diverse means for expression of opinion in a community. Where a newspaper is judged to be failing, the law acts in its favor in order to preserve competing voices in the marketplace. Newspapers participating in joint operating arrangements are expressly forbidden to merge or combine editorial or reportorial staffs and are required to deter-

1

mine editorial policies independently of each other.[2]

While some newspaper operations had been jointly managed since the thirties, their legality was not questioned until the mid-1960s when the U.S. Department of Justice focused attention on a partnership in Tucson, Arizona, and challenged it in court for monopolistic activities, demanding that the relationship be severed.[3] That move signaled owners involved in similar agreements that their business arrangements were in jeopardy and they banded together to propose to Congress that the Tucson newspapers and all others jointly operating be permitted to continue activities under an umbrella of protection from the law and the justice department. After more than five years in battle, the newspaper owners won congressional and presidential approval which overruled the courts' decision that the Tucson arrangement did indeed defy the laws of antitrust.[4]

Since that approval--the enactment of the Newspaper Preservation Act more than thirteen years ago--the Department of Justice has approved four new agreements, one of which has since dissolved,[5] and has stricken from the original list of twenty-two, one operation which did not qualify,[6] to bring the current total to twenty-four joint operating arrangements. The first such partnership to meet ultimate failure is in Saint Louis, where the Globe-Democrat planned to end its association with the Post-Dispatch early in 1984.[7] Weak members of other agreements have been warned that their partnerships may be terminated when contracts expire.[8] There remain fewer than thirty cities with competing dailies[9] operating separately which could

eventually wish to join operations. In the last five years, more than thirty competing newspapers have elected to merge ownership[10] while only three chose to apply for joint operation approval. None were turned down.[11] It is interesting to note that of about 1,500 U.S. cities with daily newspapers,[12] about 100 have two newspapers under the same ownership;[13] 24 have two newspapers separately owned but jointly operating; and about 27 have two newspapers separately owned and separately operating.[14] The remaining 1,350 are in one-newspaper cities.

What is the purpose of the Newspaper Preservation Act? Has it served its purpose and is it still useful? An analysis of the support and opposition in the perspective of changes in the industry helps answer those questions.

DEVELOPMENT OF JOINT OPERATING AGREEMENTS

The history of joint operating agreements between newspapers spans the past fifty years, from the time the first "agency plan" was set up in 1933, to the middle of the century when the accepted nomenclature was "joint operating agreement," to 1970 when the system became known officially as "joint newspaper operating arrangements" by act of Congress, to the present when a "JOA" is still an option for a newspaper owner.

Setting the Stage

The pattern of newspaper ownership was once that of small, family-owned enterprises, operating from their own shops and determining business and editorial policty within the parameters of family and community. In 1910, 97 percent of U.S. dailies were independently owned; thirteen chains owned the remaining 3 percent.[15] That year there was an all-time high of 2,202 English-language dailies in the United States. More than half of the cities with newspapers had more than one newspaper.[16] It was unusual to find a small town without its own daily.[17] A rising standard of living in the early twentieth century brought the daily newspaper into more and more American homes, with some households buying more than one newspaper per day. The ratio of newspaper circulation to households peaked in 1930 with about 1.3 newspapers per home. Then the number of news-

papers per household nosedived in the early throes of the Great Depression to 1.1.[18] Many private owners of newspapers, pressured by a tightening economy, sold out to newspaper chains in the decade of the stock market crash and by 1930 nearly 250 newspapers were chain owned,[19] up from about 54 twenty years earlier.[20] The number of newspapers, on a slow decline during the twenties, dipped drastically during the thirties and stabilized halfway into the following decade at about 1,750, down about 22 percent from the peak in 1910.[21]

The First Joint Plans

It was during the decline in newspaper prosperity in the early 1930s when there were many failures and mergers,[22] that the newspaper industry itself developed the joint newspaper operating agreement to reduce costs. Under the arrangements, two competing newspapers, one of which was in financial straits, combined their production and business operations, substantially reducing costs by eliminating duplication of equipment and manpower and especially by efficient utilization of expensive plant facilities. At the same time they maintained their editorial independence.[23] In 1933, the first joint operating agreement was signed between the New Mexico State Tribune (now the Albuquerque Tribune) and the Albuquerque Journal. E.W. Scripps Company, owner of the distressed State Tribune, and T. M. Pepperday, owner of the Journal, brought their newspapers together in one plant and combined advertising and circulation sales and distribution and agreed to share profits.[24] By the

end of the decade, newspapers in three other cities had signed operating contracts: in El Paso, Texas, in 1936; in Nashville, Tennessee, in 1937; and in Evansville, Indiana, in 1938.[25] The newspapers were the El Paso Times and the Herald-Post, the Nashville Banner and the Tennessean, and the Evansville Courier and the Evansville Press.

Dorrance D. Roderick, president and publisher of the El Paso Times, recalled during Senate hearings on the newspaper bill in 1967, that in the five years after he purchased the Times in 1931 it doubled its circulation and garnered about half of the available advertising but still hovered at the break-even point, unable to make a profit. The competing newspaper, the Herald-Post, was operating at a loss according to W. W. Hawkins, general manager of Scripps-Howard, its owner, Roderick said. "Mr. Hawkins suggested that we explore the Albuquerque plan which he and T. M. Pepperday, publisher of the Albuquerque Journal, had worked out some two years previously. Our study of the plan resulted in a joint operating agreement between the Times and Herald-Post, effective August 31, 1936." The two entities organized the Newspaper Printing Corp., sharing ownership of it equally, to manage the business, production, advertising, circulation, and accounting functions. News and editorial functions were kept separate.[26]

James G. Stahlman, president of the Nashville Banner Publishing Company and publisher of the Nashville Banner at the time of the 1967 hearings, took over operations of his paper in 1930, during an 18-month printers' strike, which, in combin-

ation with the advancing depression, brought on annual losses which totaled about $350,000 by 1936. The competing paper, the Nashville Tennessean, was operating in receivership--having gone into bankruptcy in 1931, and in 1937 was bought by Silliman Evans Sr. Stahlman said at the hearings: "Prior to this time, I had become casually acquainted with the provisions of certain joint newspaper publishing operations engaged in by Scripps-Howard Newspapers and Dorrance Roderick and Tom Pepperday, separate newspaper owners in El Paso and Albuquerque. . .I suggested to Mr. Evans that he might consider such a propsect for Nashville." In late 1937, the two newspapers announced the 30-year arrangement with option for 30-year extension.[27]

In Evansville, Indiana, the Evansville Press was not a losing corporation in 1938 when the joint arrangement was established with the Evansville Courier, which also was not failing, according to Jack R. Howard, president and general editorial manager of Scripps-Howard Newspapers in 1967, owners of the Press. "But, having observed the trends in other cities of similar size, it seemed to Scripps-Howard, I have been given to understand, that Evansville could not long have supported more than one daily newspaper operating completely independently," Howard said. This was the third of the Scripps-Howard papers to participate in a joint agreement. The Courier was independent.[28]

During the decade of United States involvement in World War II, only two pairs of newspapers signed joint operating

contracts, and both of those were developed before the economic surge provided by a geared-up wartime economy. Located in a region where most of such contracts were in effect, they were Tucson Daily Citizen and the Arizona Daily Star in Tucson, Arizona, in 1940, and the Tulsa World and the Tulsa Tribune in Tulsa, Oklahoma, in 1941.[29] Speaking before the Senate subcommittee in 1967, William A. Small Jr., owner of the Citizen, described the course of events that lead to a joint operating agreement similar to those in El Paso and Albuquerque. "In 1940, the Citizen was deeply in debt; it had paid no dividends for many years and its bank account was overdrawn," Small said. "With collapse of the Citizen inevitable, one possibility was for the Citizen to sell out to the Star and be continued under common ownership. But both the owners of the Citizen and of the Star believed that Tucson should have two independent newspapers and that a complete merging of the two papers would not be in the best interest of the community." Accordingly, in 1940, when the Citizen was on the brink of death, the parties negotiated an agreement intended to produce sufficient economies in their operations to allow both papers to continue to operate separately and with independence from an editorial point of view.[30]

In Tulsa, meanwhile, both the Tribune and the World had a prosperous decade in the twenties, paralleling the general boom in that oil town, and the momentum carried them through the depression of the thirties. Richard L. Jones Jr., president of the Tulsa Tribune Company, recalled during the Senate hear-

ings that the newspaper, then owned by his father, had just moved into a new six-story building and plant when the stock market crashed in November 1929. "At this juncture, our efforts began to be concentrated less on expansion and more on survival itself," Jones said. The Tulsa economy coasted to a near stop in 1930 and the competing World too faced operating curtailment. While both newspapers managed to weather the depression, by 1940 it was apparent the Tribune was doomed under the burden of an unpaid paper bill of a quarter of a million dollars, a note badly in arrears on an eight-unit Goss press and an issue of 6 percent cumulative stock, said its owner. "(We) had seen and studied the cost reductions in Albuquerque, El Paso, Nashville, and Tucson, where two separate newspapers had pooled facilities, equipment and personnel into a one-plant operation and had still preserved for their communities separate editorial voices and the rivalry and competitive spirit of their news staffs," said Jones. The agreement was announced July 1, 1941.[31]

The Postwar Joint Operating Agreements

At the end of World War II the number of newspapers in the United States had declined and leveled off at about 1,745[32] but because of the increase in the number of communities in the first half of the century, three out of every four American towns had no daily paper of their own at the end of that period.[33] Ten years past the midcentury mark, almost one-third of U.S. dailies would be owned by chains.[34] The number of newspapers per household had dropped from 1.3 during the

BEST COPY AVAILABLE

prewar years and would eventually reach one newspaper per household, in the midsixties.[35] In the early postwar period, the Wisconsin State Journal and the Capital Times in Madison, Wisconsin, became the seventh partnership in the country and the first after a wartime lapse, when they joined in 1948. The year 1950, however, showed more activity in newly formed joint operating agreements than any year before or since, with four sets joining the roster. Those partnerships were formed in Birmingham, Alabama, Fort Wayne, Indiana, Lincoln, Nebraska, and Bristol, Tennessee.[36]

In Birmingham, the Birmingham Post faced folding, merging or joining the Birmingham News due to sizable losses which were increasing, said Jack R. Howard, president and general editorial manager of Scripps-Howard Newspapers, during the Senate hearings. "The Birmingham joint arrangement entered into in 1950 seemed to us to offer the solution most favorable to the public interest, for it preserved two separate, independent newspapers," Howard said.[37]

After the rush of 1950, joint operating agreements came on at the rate of less than one per year. In 1952, the Deseret News and the Salt Lake Tribune in Salt Lake City, Utah, began joint operation. The Deseret News, after a five-year program to build circulation, found it could no longer sustain the substantial losses incurred each year since 1947.[38] The following year, the Shreveport Times and the Shreveport Journal of Shreveport, Louisiana, joined the ranks and in 1956 the News-Herald and the Oil City Derrick in Franklin/Oil City, Pennsyl-

BEST COPY AVAILABLE

vanis, became operating partners.[39] One year later in Knoxville, Tennessee, the Knoxville Journal, a losing corporation for several years, approached the Scripps-Howard-owned Knoxville News-Sentinel to propose joint operation.[40] The thriving News-Sentinel agreed and the two newspapers signed in 1957. That same year, the Globe-Democrat and the Post-Dispatch in Saint Louis agreed to operate together. In 1958 in Charleston, West Virginia, the Charleston Gazette and the Charleston Daily Mail joined.[41] The Columbus Citizen-Journal and the Columbus Dispatch in Columbus, Ohio, followed in 1959 when the Citizen faced discontinuance or merger without a joint agreement. In 1961 another Scripps-Howard paper, the Pittsburgh Press, joined a weaker paper, the Pittsburgh Post-Gazette in operations.[42]

In 1962, the Honolulu Advertiser faced the fiercesome threesome of liquidate, sell, or jointly operate, according to Thurston Twigg-Smith, president and publisher, who bought the paper the year before.[43] The rival Honolulu Star-Bulletin had been gaining on the Advertiser since 1950 and by 1958 the Advertiser was down to only 37 percent of total advertising and 32 percent of circulation. Faced with annual losses of about $100,000 in 1960 and 1961, the newspaper cut back on promotion and in six months lost from 70,000 circulation to 61,000. "By May of 1962 the Advertiser's circulation and advertising were dropping alarmingly, and an early consumation of the contract with the Star-Bulletin was essential to the Advertiser's survival," said Twigg-Smith.[44]

BEST COPY AVAILABLE

In 1964, the San Francisco Chronicle and the Hearst-owned San Francisco Examiner signed for joint operations when the family-owned Chronicle could no longer withstand the economic pressure of money poured into the competing paper by the Hearst organization. Charles Thieriot, editor and publisher of the Chronicle and the grandson of its founder, testified at Senate hearings that he believed the Chronicle was in the stronger position of the publications and better able to survive. "But if Hearst had determined that it was willing to devote the amounts of money that it would have cost to maintain its operations in San Francisco and such additional amounts as might have been necessary to attempt to regain the lead in circulation," Thieriot said, "I do not know whether the Chronicle would have had enough financial energy to meet this increased economic pressure."[45]

In Miami two years later, the Miami Daily News and the Miami Herald joined forces, the last such partnership to be formed before the enactment of the Newspaper Preservation Act four years later in 1970.[46]

JOAs in the Post-NPA Period

In 1974, Attorney General William B. Saxbe approved the operating agreement in Anchorage, Alaska, of the Anchorage Daily News and the Anchorage Daily Times. The liberal News, with a circulation of 15,000 gave up its Sunday publication to the Times which had a daily circulation of 43,000. The agreement ended by mutual consent in 1979 after the News sued

BEST COPY AVAILABLE

the Times and won a $750,000 settlement.[47]

In 1979 the Cincinnati Post joined with the much stronger Cincinnati Enquirer, following a seven-year period during which the Post lost nearly $10 million.[48] After a seven-week hearing on the joint operating agreement, Attorney General Benjamin Civiletti approved the combination.[49]

In 1980, the Chattanooga Times and the Chattanooga News-Free Press rejoined operations with the blessing of Attorney General Civiletti after a split prior to the enactment of the Newspaper Preservation Act. The two newspapers had operated together for 24 years, breaking the tied in 1966.[50] In 1970 they were nearly even in daily circulation although the News-Free Press had less than 40 percent of Sunday circulation. Before the end of the decade the balance was upset and the News-Free Press controlled advertising linage and circulation while the Times sustained losses of nearly $3 million. The Chattanooga partnership is the only one which has been dissolved and revived.[51]

In 1982, the Seattle Post-Intelligencer and the Seattle Times in Seattle, Washington, joined operations with the approval of Attorney General William French Smith. Despite opposition from 250 suburban weeklies, local advertisers and P-I employees,[52] who succeeded in having the approval overturned in district court, appeals were cut off in October 1983, and a circuit court reinstatement of Smith's approval remained in force.[53]

BEST COPY AVAILABLE

THE NEWSPAPER PRESERVATION ACT

The Newspaper Preservation Act is a two-page document which was enacted by the Senate and House of Representatives and became law on July 24, 1970, "to exempt from the antitrust laws certain combinations and arrangements necessary for the survival of failing newspapers." In the Declaration of Policy, Congress states: "In the public interest of maintaining a newspaper press editorially and reportorially independent and competitive in all parts of the United States, it is hereby declared to be the public policy of the United States to preserve the publication of newspapers in any city, community, or metropolitan area where a joint operating arrangement has been heretofore entered into because of economic distress or is hereafter effected in accordance with the provisions of this Act."[54]

The act defines a joint newspaper operating arrangement as a contract between two or more newspaper owners for the publication of two or more newspapers in which they agree to operate together in one or more of the following areas: printing; time, methods and field of publication; allocation of production facilities, distribution; advertising solicitation; circulation solicitation; business department; establishment of advertising rates; establishment of circulation rates and revenue distribution. At the same time, the act for-

14

BEST COPY AVAILABLE

bids any merger, combinations or amalgamations of editorial or reportorial staffs and demands that editorial policies be set independently by each newspaper.[55]

The act defines a failing newspaper as "a newspaper publication which, regardless of its ownership or affiliations, is in probably danger of financial failure."[56]

Under the antitrust exemption section of the act, newspapers already in joint operation may continue such activity, provided only one publication is financially sound and they may amend their contracts provided they file the new terms with the Department of Justice.[57] New joint operating agreements require the approval of the attorney general who must agree that only one of the newspapers involved is financially sound before he signs the consent.[58] The act also permits reinstatement of any joint operating agreement which the courts had previously held unlawful under any antitrust law.[59]

* * * * * * *

The Newspaper Preservation Act was passed by both houses of Congress and signed by President Richard Nixon against the recommendation of his attorney general.[60] The proposal was formulated by publishing interests who opposed a Supreme Court ruling which put an end to a joint operating agreement in Tucson, Arizona.[61] The Tucson case was the handwriting on the wall for the other 42 newspapers also operating jointly. Indeed, a spokesman for the Department of Justice told the Senate subcommittee that the antitrust division planned to take action against other joint publishing agreements.[62]

BEST COPY AVAILABLE

The Catalyst

While the newspaper industry had been no less ready to adopt competitive practices than have other businesses, the Department of Justice had initiated very few proceedings against newspapers[63]--probably because of government sensitivity to infringement of press freedom. Before 1963 only eight major suits had been filed against newspapers charged with antitrust violations, and only five of those were instigated by government. In 1963, however, the antitrust divison of the Department of Justice bolstered its actions against the newspaper industry[64] and in 1965 filed its first challenge to a joint operating agreement: Citizen Publishing Company v. United States.[65] Not only did the suit challenge the 1940 joint operating agreement between two dailies in Tucson, it also attacked the 1964 acquisition of one of the papers by the other. It is, however, the joint operations challenge for which the case is primarily known. It was the stimulus for passage of the Newspaper Preservation Act because the judgment made it likely that similar agreements between newspaper publishers in other cities were illegal.[66]

The two newspapers involved in Citizen v. United States were the Tucson Daily Citizen and the Arizona Daily Star. They had been operating jointly since 1940, following an eight-year period during which the Citizen suffered increasing annual losses.[67] After the arrangement was put into operation, the Citizen regained its financial balance and both papers operated at a profit.[68] In 1965 when another publisher offered to buy the Star for $10 million, the Citizen matched the offer

BEST COPY AVAILABLE

and exercised the purchase option as provided under terms of their joint agreement.[69] The Department of Justice filed a suit almost immediately, challenging both the acquisition and the joint operating agreement on the grounds that the merger violated section 7 of the Clayton Act and that the agreement violated sections 1 and 2 of the Sherman Act.[70] The district court ruled that the merger "virtually eliminated the likelihood of renewed competition" between the two papers in violation of the Sherman Act and it ordered divestiture. (The order was affirmed later by the Supreme Court.)[71] At the same time, the district court found that the joint operating agreement violated the Sherman Act[72] and in its affirmation the Supreme Court opinion stated: "The purpose of the agreement was to end any business or commercial competition between the two papers and to that end three types of controls were imposed. . .price fixing. . .profit pooling. . .market sharing." The court did allow for joint operation by the two newspapers under terms that would eliminate the illegal price/market/profit controls.[73] According to the legal counsel for Citizen, such elimination excluded all provision of joint operation except joint use of presses, printing equipment and delivery trucks.[74]

The thrust of the court's decision in Citizen was to affirm "the prevailing narrow scope"[75] of the judicially created doctrine of the failing company. That issue was the only one discussed at any length by the Supreme Court and it held that Citizen had not established that it was a failing company under

BEST COPY AVAILABLE

the terms of court precedent, especially with regard to the joint operating agreement.[76] Historically, the acquisition of a competitor had been permitted by antitrust law when the competitor was failing, on the theory that the competitor would eventually cease to exist if it were not purchased.[77] The failing company definition was developed for cases involving acquisitions and mergers[78] and the Tucson newspaper termed its joint operation a "commercial merger" in order to use the failing company defense to support it.[79] The district court disallowed the contention that the arrangement was a merger, and the Supreme Court affirmed that decision[80] but said, nonetheless, that in either merger or joint agreement litigation, the failing company defense could be used. The court further stated that to be complete the defense must satisfy three criteria: 1)The company must face liquidation; 2)it must have attempted reorganization under the Bankruptcy Act; and 3)it must have attempted to sell to someone other than the local competitor.[81] The court found that the burden of proving those conditions had not been satisfied.

The Supreme Court concluded that the private arrangements were not supported by the First Amendment as taught by Associated Press v. United States.[82]

Reaction to Citizen v. United States

In 1967, while the Tucson case was in progress, legislation which eventually became the Newspaper Preservation Act was introduced in both the House and the Senate of the 90th

BEST COPY AVAILABLE

Congress.[83] The legislation was reintroduced in the 91st Congress by more than 100 members of the House under its final title, the Newspaper Preservation Act. The moving force behind the legislation were the newspaper publishers who owned the papers which were jointly operating. Spokesmen for them and the newspaper industry said all the proposal asked for was limited exemption from antitrust statutes so publishers could conduct businesses as single-ownership papers can with respect to pricing, marketing, and profits. They would not be able to engage in predatory practices aimed at killing existing competition or driving out new competition.[84]

Leading the opposition were the Deparment of Justice and the Federal Trade Commission, newspaper unions and small publishers. They said the proposal would give the newspapers monopoly power and permit them to choke off competition and enhance their profits beyond reason.[85] Volumes of proceedings from Senate and House hearings conducted during the three years the proposal was pending yield a fascinating picture of the newspaper industry in the middle half of the twentieth century.

Dorrance D. Roderick, president and publisher of the El Paso Times was one of the earliest participants in a joint operating agreement and one of its staunchest supporters. Commenting upon the arrangement between the Times and the Herald-Post, Roderick said, "The agreement has continued for 31 years with no significant changes, and has permitted each newspaper to serve its readers and community on a strictly independent basis. Keen competition in the news and editorial content has

BEST COPY AVAILABLE

continued unabated. On certain events and issues the disagreement has been pointed, to say the least."[86] John G. Tower, U.S. senator from Texas, attested to the independent editorial policies of the two newspapers when he introduced Roderick at the hearing: ". . .in 1961 when I was running, the El Paso Herald-Post, a Scripps-Howard paper, editorially endorsed me. Mr. Roderick's paper endorsed my opponent. If there is any evidence anywhere of the editorial independence of two newspapers under this arrangement, it certainly can be found in El Paso." Both papers maintained their own Washington news correspondents then, and had for twenty years, Tower said.[87]

In Nashville, the operating agreement had been automatically extended by both parties in 1967, for another 30 years, when James G. Stahlman, longtime publisher of the Nashville Banner, said at the hearings: "Despite the constantly mounting costs of production--labor, newsprint, ink, wire services, plant equipment, telephone and telegraph communications, transportation, not to mention taxes, high at every governmental level--the agency operation has enabled Nashville's newspapers to better serve their community, state and nation with top bracket newspapers in their respective afternoon, morning and Sunday fields. Were such an agency operation impossible, both newspapers would be unthinkable, if not calamitous."[88]

Owner William A. Small Jr. spoke for the Tucson Daily Citizen at the hearings and called the joint operation with the Arizona Star successful both commercially and in terms of newspaper quality. "Both newspapers are today (1967) on a

BEST COPY AVAILABLE

sound financial footing. . .the Daily Citizen now costs the reader less per page than it did in 1940. . .advertising rates have increased a lesser amount than did those of 93 percent of the other newspapers" in its circulation category.[89] He said that without the joint economics of joint operation and solicitation of advertising and circulation, the Citizen would fail. He continued, "Separate staffing in these commercial areas would eliminate many of the economies which brought the papers together in the first place." The Citizen would suffer from a weaker competitive position since it did not have a Sunday paper, he added.[90] The same basic mechanics of the 1940 operating arrangement were still in effect in 1967. The Star and the Citizen had their production equipment in joint ownership and a third corporation, Tucson Newspapers, Inc., managed the jointly owned property and paid for joint production and operating costs. Revenues in excess of those costs were distributed to the newspapers in accordance with a predetermined formula, and each paper paid its own salaries and expenses connected with its news and editorial operations.[91]

According to Richard L. Jones Jr., president of the Tulsa Tribune Company, the joint operation yielded savings as expected in operating a single advertising department, a single business office, and a single press. He also found substantial savings in having to pay a single rent, a single light bill, and a single insurance policy. His company learned, he said, that national advertisers were more willing to buy space in a newspaper circulation of 130,0[illegible]an in one individual

BEST COPY AVAILABLE

newspaper with 60,000 and another with 70,000. While newsprint and ink costs have tripled, subscriptions were then less than twice what they were 26 years earlier, Jones said.[92]

The hearings also yielded vociferous statements from owners and publishers who opposed passage of the bill. Eugene Cervi, editor and publisher of the Rocky Mountain Journal, a spirited business and public-affairs weekly, called the proposal an "unabashed attempt to legalize practices now prohibited by laws rarely enforced. . .This bill would shut down in time the market place of ideas and ultimately see this significant means of communication gravitate into the hands of a dictatorial elite." Bad newspapers, he said, ought to die.[93]

Elmer Brown, president of the International Typographic Union which led the opposition of union interests, said workers were concerned for the envelopment of the industry by monopolistic forces interested in profit rather than in journalism and public service. "They are preoccupied with operating statements and balance sheets. It is for this reason that chain newspapers are notably absent from lists of the best papers in the United States."[94]

Ben Bagdikian of Washington, D.C., a former newspaperman and a press critic, opposed the bill and favored an alternative offered by the American Newspaper Guild that proposed that failing papers be offered at a fair market price before being merged or killed. "I would prefer an honest, outright merger to an inhibited hybrid that comes from combined business and advertising operations," Bagdikian said. He charged that

BEST COPY AVAILABLE

the act would, at best, give temporary relief for business problems which, where genuine, arise from a failure to keep up technology and good management practices. Once caught in the "downward spiral," a term used often during the hearings, failure is inevitable, he added. Bagdikian said the joint operations would prevent new independent operators from starting new newspapers and that two newspapers operating jointly would eventually adjust to each other editorially as well.[95]

William J. Farson, executive vice president of the American Newspaper Guild, which represented 32,000 newsmen and commercial department employees, called the bill an extension of the newly defined failing enterprise defense which would place the entire newspaper outside the reach of antitrust laws and still not accomplish its aim of preserving the historic independence of the press. "Senate 1312 would actually encourage and accelerate the trend toward monopoly and chain-owner dominance of the nation's newspaper industry by legitimatizing certain business practices that are used to discourage or squelch competition, and which are now properly forbidden under antitrust laws," Farson said.[96]

It is interesting that the final entry in the last volume of the Senate hearings on the Newspaper Preservation Act is written by a broadcast specialist who held that the 1927 Radio Act, enacted five years before the first newspaper joint ownership contract was signed, fails to recognize diversification and antitrust policy as the most important elements

BEST COPY AVAILABLE

of the public interest standard. A fledgling industry in 1927, the broadcast industry by 1969 had overwhelmed newspapers and was sufficiently powerful for a member of the Federal Communications Commission to threaten: "It would seem to me that if we found that, as a result of a joint newspaper operation, there was an impact upon broadcast operations which for <u>any reason</u>[97] we found contrary to the public interest, we would be required to take action."[98] In conclusion, the entry says, "In the process of this regulation the commission must remember that the right of the listening public. . .not the right of broadcasters is paramount. The first amendment guarantees free speech; not a monopolization of it."[99]

BEST COPY AVAILABLE

THE YEARS SINCE NPA ENACTMENT

The Newspaper Preservation Act sanctioned the joint operating agreements concept when it passed in 1970, but it did not remove the controversy surrounding the concept. Newspapers which have sought shelter of the act have met with resistance in obtaining approval and have not always enjoyed the success and relief the agreements gave the newspapers which opted for joint operation in pre-NPA days. Even those papers which were already jointly operating when the act passed are now facing financial problems that the strategy may not be powerful enough to solve. Of the four pairs of newspapers which have applied for protection since 1970, two weathered fierce battles to gain approval and one dissolved after severe internal disagreement within the partnership. At least two of the pre-existing agreements have been seriously and repeatedly challenged by competing media and another agreement will soon end. Others with expiration dates in the near future appear to be in jeopardy of cancellation.

New Joint Operating Arrangements Under NPA

The marriage of the business operations of the Anchorage Daily News and the Anchorage Daily Times in Anchorage, Alaska, took place in 1974 and after several years of wrangling the

BEST COPY AVAILABLE

two parted company in 1979. The smaller Daily News, published by Katherine Fanning, filed a $16.5 million suit in early 1977 charging that the Times was managing circulation to the detriment of the News[100] and that by taking over the News's biggest asset, the city's only Sunday paper, it had damaged it irreparably.[101] The Times paid the News $750,000 when the parties agreed to terminate[102] and Mrs. Fanning raised capital to build her own printing plant by selling a majority interest in the paper to C. K. McClatchy, head of a Sacramento-based chain. Within two years of the solit, the News had tripled its circulation to 39,000 and added a Sunday edition nearly that big to give the Times a run for its circulation.[103]

In 1977 a request for joint operation was submitted to public hearing in a quasi-judicial process with an administrative law judge presiding.[104] Combination of the Cincinnati Post and the Cincinnati Enquirer, subject of the hearing, was strenuously opposed by the unions and suburban weeklies who charged that the Post had been intentionally bled by its owner, Scripps-Howard, so that it could qualify as a failing newspaper and enter into operation with the stronger Enquirer, a Gannett paper.[105] Evidence was introduced at the hearing that the Post had paid overcharges to Scripps-Howard for use of stories[106] (an allegation which the judge presiding at the hearing found to be true[107]); failed to explore starting a Sunday edition as recommended

BEST COPY AVAILABLE

by its consultants and business manager to forestall further decline; and did not raise subscription prices in 1977 to match an increase by the Enquirer, although this had been the practice for twenty years,[108] and did not pursue survival by offering the paper for sale. Stephen Barnett, a professor of law and an NPA critic, charges the Post's "handsome losses were produced" so that it could claim failure and enter into a joint agreement with the blessing of the Department of Justice.[109] Wayne Overbeck and Rick D. Pullen, authors of legal textbooks, concur with this view.[110] The Department of Justice, after a seven-week hearing, accepted the recommendation of its antitrust division and the presiding officer and approved the agreement. It found the overcharges by Scripps were insignificant[111] and that the proposal for a Sunday edition came too late to save the paper.[112] A major element in the case was the fact that the Post was required to open its financial records in support of its losses, something that had not happened before, not even during the hearings for the NPA bill.[113] The court also ruled that a failing newspaper does not have to try to sell the paper to an outside buyer before it resorts to joint operation.[114]

Attorney General Benjamin R. Civiletti confirmed the Cincinnati finding that the failing paper need not seek to sell outside when he approved the joint agreement in 1980 between the Chattanooga Times and the Chattanooga News-Free Press in Chattanooga, Tennessee, and added the stipulation that a publisher who refuses to entertain offers to buy must show

BEST COPY AVAILABLE

that new owners could not materially improve the newspaper's financial condition. Antitrust had originally recommended against approval of the joint agreement on grounds that the Times was not failing and again later because the Times had allegedly consumated the deal without approval, but then, in a supplemental report, recommended approval of the request, citing the Times' contention that it could operate only four to six more weeks without approval.[115]

In Seattle, court action ended October 11, 1983, with Supreme Court refused to repeal the decision of Attorney General William French Smith, affirmed by the lower courts, to approve an agreement to jointly operate the Seattle Post-Intelligencer and the Seattle Times, in Seattle, Washington. The court confirmed the findings of the appellate court in which it reversed a lower court decision and found the attorney general's ruling for approval fulfilled the intent of the Newspaper Preservation Act. The appellate court concluded that the failing paper must prove there were no buyers and no alternatives and that the Times in its brief had satisfied that burden. The main impact of the Seattle case was the court's decision that the financial condition of the parent company (in this case, Hearst) was irrelevant to the failure of the newspaper in question.[116]

Post-NPA Challenges to Old Agreements

The 1965 combination of the San Francisco Chronicle and the San Francisco Examiner, approved somewhat conditionally by Attorney General Nicholas Katzenbach while the storm

clouds gathered over Tucson, has been under frequent attack of private antitrust suits brought by small competing papers and advertisers. In 1975 the Chronicle settled a number of suits and almost immediately more were filed by other newspapers, all charging that the Examiner had not been a failing company when approval was given for the joint operation.[117] The San Francisco combination was also challenged that same year for alleged illegal use of combination rates, a frequent charge against them over the years.[118]

In 1983 the Honolulu Star-Bulletin and the Honolulu Advertiser were cleared of a threat to their joint operating agreement when the Honolulu City Council dropped its antitrust suit filed four years earlier.[119] The suit charged that the agreement was monopolistic and anticompetitive and unfairly controlled charges for legal advertising the city did in the papers.[120] After a five-week trial which ended in a hung jury, a district court judge dismissed the suit on the grounds that the city had waited too long--17 years--to file suit against the 1962 arrangement.[121]

An Overview of Current JOA Trends

Joint operating contracts still resemble one another as they did in the early days when one was often almost copied from the last or from others in a chain, however the sharing plans arebeing reassessed as old contracts expire. Most of the contracts allot expenses and profits to each publisher based on circulation, advertising linage, or other means of measuring

the business activity of each. In several cases, especially prior to the Department of Justice surveillance and when two papers were relatively matched in strength, profits were shared equally. Several agreements accomplish equal sharing by assigning half ownership of the intermediate agency to each publisher. One pact, since terminated, shared profits by assigning half ownership of each paper to the other partner.[122] In private conversation with a staff member of one newspaper partnership, renegotiation of a contract recently reportedly gave the smaller paper a 28 percent share of profits. Another partnership simply pays the smaller newspaper a predetermined amount of money for its expenses and adds up to 15 percent of the combined profits, depending upon the year's comparative business activity.[123]

With the demise of the Saint Louis Globe-Democrat, only twenty-three of the remaining fifty cities with newspaper competition will have merged business operations under NPA. Several of those have been been threatened with nonrenewal when the contracts expire: The Columbus Dispatch has notified its partner, the Citizen-Journal, that it plans to terminate the arrangement December 31, 1985, though analysts believe the contract will be renegotiated heavily in favor of the Dispatch, which has almost double the circulation. Other partnerships that are lopsided in terms of circulation and may be candidates for termination are the Miami Herald (circulation, 407,000) and the Miami News (61,000); San Francisco Chronicle (531,000) and the Examiner (141,000). Within the last five years, new agree-

ments have been negotiated in Birmingham, Albuquerque, and Shreveport, where the circulation differences are pronounced. In each case, the smaller paper made concessions to the larger, percentage of profit dropping as low as 18.5 percent.[124]

All but two of the cities where newspapers have joint operating agreements have populations of 100,000 or more.[125] More than half of the linked newspapers have group affiliation, with twenty-six out of forty-six chain-owned.[126] In 1971, fifteen of the forty-four papers involved were owned by groups.[127]

CONCLUSION

At issue in the controversy over the Newspaper Preservation Act is whether or not preservation of failing newspapers is in the public interest and, if it is, whether exemption from antitrust is a legitimate and successful means to that end.

Proponents of the act assert that preservation of a second newspaper, separately owned, constitutes competition and is essential to assure a community of the expression of a diversity of opinion, and that joint operation is sometimes the only means to preserve a second newspaper, separately owned.

Opponents maintain that competition itself is the only guarantor of preservation of two voices within a community and that when competition fails to secure the financial survival of a medium, the marketplace will supply other means for diversity of expression, and that joint operation is a gimmick to enhance profits through market control.

Underlying the network of support for both sides of the issue is the shifting substrata of the media world, the ground flux of changing economic definitions, and the changing political ideology, technology, and social circumstance which impact heavily on communication media.

The cause for newspaper preservation and the will to

safeguard the institution were at their strongest in the days of the first agreement, when broadcast media were not yet a threat, when innovative survival techniques were a necessity of a depressed economy, and when government control was relatively undeveloped. At midcentury, newspapers began to feel the effects of audience loss as postwar dollars were paid down on television sets in millions of homes and an expansive and relieved American public welcomed entertainment in the media to replace the absence of frontline dispatches. The flurry of joint operations were arranged by the newspaper industry as government and society went about their own adjustments to peace and prosperity. And then came the sixties, a period when tradition declined in value and its spokesman, the daily newspaper, lost clout, too. Big industry was under early attack for everything from discrimination to pollution to unfair trade practices and by the middle of the decade the attack hit the newspaper industry in the form of a challenge to its growing use of the joint operation as a management strategy. In the climate of the times it is easy to see how opponents of joint operation arranged a day in court with the Tucson newspapers. What is less easy to explain is how the bill got past a liberal Congress, one that was rubberstampting social programs and planting wildflowers in ditches--and past a president whose contempt for the press is legend, but who overrode his attorney general to sign the bill. The act played to a critical audience in the decade of the seventies when litigation against newspapers

increased markedly, especially in libel cases.[128]

In the decade of the eighties, joint operation may become a moot issue. Two of the last four applications for exemption have been seriously challenged in long and financially exhausting battles for newspapers; litigation is expensive. The spectre of the first failed JOA looms over several other cities where the downward spiral may catch it in its draft. Joint operation becomes a means of sustaining a healthless existence before a machine of chain operation takes over the independent, though assisted, labored breathing of a dying newspaper. Small papers in partnerships are becoming smaller and at least one-fourth of those face termination before the end of the decade. Failing newspapers eligible for joint operation are passing up that option and are instead folding.

Proponents of joint operation look at the bright side: Only one newspaper in fifty involved has failed in fifty years compared with an overall attrition of twelve in fifty. The one failure and the several weakenings are indicator enough that joint operation is not an all-powerful tool the industry is using to produce unfair profits, they add. Even if a newspaper fails its survival for an average of 28 years has served the public during the grace period.

Opponents point to some of the same facts in support of their position. If newspapers are no longer turning to joint operation as a saviour, it affirms their stance that the

strategy does not save failing newspapers; the continued weakening of the several smaller papers confirms it, they say. Proof exists that papers which could not survive under a joint arrangement can survive under independent operations and even thrive, given the opportunity to escape the contract. The rate at which chains are buying the smaller papers under joint operations indicates to opponents that joint management is a technique to build up an unattractive buy until a buyer comes along.

If the San Francisco combination collapses and no new papers apply for arrangements, it is possible that the courts will hear no more about joint operations. If joint operation continues to be no more than a burial policy to lay newspapers to rest with dignity, the NPA is probably safe from further attack.

It would be surprising, however, if the newspaper industry would permit the option to be exempt from antitrust to slip away without a creative effort to adjust the terms of the Newspaper Preservation Act to some other purpose. Five publishers are already studying the possibility of expanding coverage so they can enter electronic publishing ventures.[129]

FOOTNOTES

1 Newspaper Preservation Act, U.S. Public Law 91-353 (1970). (See appendix A.)

2 Parks, Michael, "Fold or Combine: It's a Matter of Dollars," Advertising Age, July 19, 1982, p. M30.

3 U.S. Senate Committee on the Judiciary, subcommittee on antitrust and monopoly, hearings on S. 1312, The Failing Newspaper Act, Part I, July 12, 13, 14, 18, 19, 25 and 26, 1967, p. 314. (Testimony of Ben H. Bagdikian.)

4 "JOA--A 50-Year Record of Newspaper Life-Saving," Editor and Publisher, March 13, 1982, p. 14.

5 Parks, p. M30.

6 Seldin, Kathy, Paralegal, Enforcement Office, Antitrust Division, U.S. Department of Justice, in a telephone conversation, Dec. 1, 1983.

7 "Purchase Offer Pulled for St. Louis Newspaper," Tuscaloosa (Ala.) News, Jan. 8, 1984, p. 20A.

8 Jones, Alex D., "Plight of the Weaker Newspapers," New York Times, Nov. 12, 1983, p. 31.

9 "29 Cities Left Where Dailies Totally Compete," Editor and Publisher, Sept. 18, 1982, p. 13.

10 Radolf, Andrew, "32 Dailies Have Merged Since 1978," Editor and Publisher, Sept. 18, 1982, p. 11.

11 Jones, p. 31.

12 Stout, Richard T., Tinkelman, Joseph, "Death in the Big City," The Quill, October 1981, p. 10.

13 Radolf, p.11.

14 "29 Cities Left. . .," p. 13.

15 Dertouzos, James N. and Thorpe, Kenneth, Newspaper Groups: Economics of Scale, Tax Laws, and Merger Incentives (Published for the U.S. Small Business Administration; Santa Monica, Calif.: Rand Corp., June, 1982), p. 3.

BEST COPY AVAILABLE

16 U.S. House of Representatives, Report No. 91-1193 from the Committee on the Judiciary, June 15, 1970, p. 3,4.

17 U.S. Senate Committee on the Judiciary. . ., Part I, p. 310. (Testimony of Ben H. Bagdikian.)

18 Bogart, Lee, Press and Public (Hillsdale, N.J.: Lawrence Erlbaum Associates, Publishers, 1981), p. 2.

19 Carlson, John H., "Newspaper Preservation Act: A Critique," Indiana Law Journal, v. 46, 1970-71, p. 394.

20 Dertouzos, p. 1.

21 Coulson, David C., "Antitrust Law and the Media: Making Newspapers Safe for Democracy Safe for Democracy," Journalism Quarterly, Spring, 1980, p. 81.

22 Oppenheim, S. Chesterfield, Newspapers and the Antitrust Laws (Charlottesville, Va.: The Michie Company, 1981), p. 215.

23 Carlson, p. 398.

24 "JOA--A 50-Year Record. . .," p. 14.

25 Carlson, p. 398.

26 U.S. Senate Committee on the Judiciary. . ., Part II, July 27, 28, Aug. 7-9, 14-15, 1967, p. 769-70.

27 Ibid., p. 1012-14.

28 U.S. Senate Committee on the Judiciary. . ., Part I, p. 265.

29 Carlson, p. 398.

30 U.S. Senate Committee on the Judiciary. . ., Part 1, p. 6.

31 Ibid., p. 232-3.

32 Carlson, p. 398.

33 U.S. Senate Committee on the Judiciary. . ., Part I, p. 310.

34 Dertouzos, p. 100.

35 Bogart, p. 2.

36 Carlson, p. 398.

37 U.S. Senate Committee on the Judiciary. . ., Part I, p. 265.

BEST COPY AVAILABLE

38 U.S. Senate Committee on the Judiciary. . ., Part II, p. 907. (Testimony of George L. Nelson, legal counsel for the Deseret News Publishing Co., Salt Lake City, Utah.)

39 Carlson, p. 4.

40 U.S. Senate Committee on the Judiciary. . ., Part I, p. 265. (Testimony of Jack R. Howard, president and general editorial manager of Scripps-Howard Newspapers.)

41 Carlson, p. 4.

42 U.S. Senate Committee on the Judiciary. . ., Part I, p. 265. (Testimony of Jack R. Howard.)

43 It is interesting to note that since its founding in 1856, the Advertiser had survived as an independent voice through several monarchies, a provisional government, a republic, a territorial government, and finally a state government.

44 U.S. Senate Committee on the Judiciary. . ., Part II, p. 612-15.

45 U.S. Senate Committee on the Judiciary. . ., Part I, p. 544-46.

46 Carlson, p. 398.

47 Barnett, Stephen R., "The Anchorage Failure," Columbia Journalism Review, Jan. 8, 1980, p. 42.

48 Parks, p. M31.

49 Barnett, Stephen R., "Monopoly Games--Where Failures Win Big," Columbia Journalism Review, May/June 1980, p. 42.

50 "JOA--A 50-Year Record. . .," p. 14.

51 Barnett, Stephen R., "Fast Shuffle in Chattanooga," Columbia Journalism Review, November/December 1980, p. 65.

52 Stout, p. 14.

53 Committee for an Independent P-I v. Hearst Corp., 704 F.2D 467 (1983).

54 Newspaper Preservation Act, Section 2.

55 Ibid., Section 3(2).

56 Ibid., Section 3(5).

57 Ibid., Section 4(a).

58 Ibid., Section 4(b).

BEST COPY AVAILABLE

BEST COPY AVAILABLE

59 Ibid., Section 5(a).

60 "JOA--A 50-Year Record. . .," p. 1b.

61 Pratte, Alf, "Tail That Wags the Dog," Grass Roots Editor, July 1983, p. 5.

62 U.S. Senate Committee on the Judiciary, subcommittee on antitrust and monopoly, hearings on S. 1520, The Newspaper Preservation Act, June 12, 13 and 20, 1969, p. 209. (Testimony of Richard W. McLaren, assistant attorney general, antitrust division, Department of Justice.)

63 Oppenheim, p. 165.

64 Coulson, p. 79

65 Wollert, James A., "Antitrust and the Media: the NCCB Decision," p. 11. (An unpublished paper, University of Iowa.)

66 Oppenheim, p. 168-69. The district court, affirmed by the Supreme Court, ruled that the acquisition of the Arizona Daily Star by the Tucson Daily Citizen violated Section 2 of the Sherman Act and Section 7 of the Clayton Act because it eliminated the likelihood of renewed competition because it was a part of a conspiracy to monopolize the daily newspaper business in Tucson. Divestiture of the Star was ordered.

67 Gillmor, Donald M., and Barron, Jerome A., Mass Communication Law: Cases and Comment (St. Paul, Minn.: West Publishing Co., 1979), p. 711.

68 Wollert, p. 12.

69 Gillmor, p. 711.

70 Oppenhheim, p. 161, 169. According to Department of Justice guidelines, mergers and acquisitions can be challenged under the Sherman Act but are usually made under Section 7 of the Clayton Act which is intended to outlaw incipient restraints of trade and anti-competitive acts before they reach the point of violating the Sherman Act.

71 Citizen Publishing Co. et al v. United States, 89 S.Ct. 927 (1969).

72 Oppenheim, p. 171.

73 Citizen Publishing Co. et al v. United States.

BEST COPY AVAILABLE

74 U.S. Senate Committee on the Judiciary. . ., hearings on S. 1520, p. 315. (Testimony of Morris J. Levin, counsel for Tucson Newspapers Inc.)

75 Citizen Publishing Co. et al v. United States.

76 Oppenheim, p. 171.

77 U.S. Senate Committee on the Judiciary. . ., hearings on S. 1520, p. 319. (Testimony of Morris J. Levin.)

78 Oppenheim, p. 175.

79 U.S. Senate Committee on the Judiciary. . ., hearings on S. 1520, p. 314. (Testimony of Morris J. Levin.)

80 Ibid., p. 315.

81 Citizen Publishing Co. et al v. United States.

82 Associated Press v. United States, 326 U.S. 1, 20: "Freedom to publish is guaranteed by the Constitution; but freedom to combine to keep others from publishing is not. Freedom of the Press from governmental interference under the First Amendment does not sanction repression of that Freedom by private interests."

83 Coulson, p. 12.

84 "JOA--A 50-Year Record. . .," p. 14.

85 Barnett, "Monopoly Games. . .," p. 40-41.

86 U.S. Senate Committee on the Judiciary. . ., Part II, p. 770.

87 Ibid., p. 766-7.

88 Ibid., p. 1016-17.

89 U.S. Senate Committee on the Judiciary. . ., Part I, p. 6,7.

90 Ibid., p. 9. Small also told the subcommittee that he and his father, majority owners, bought the Star because they did not want to operate jointly with the highest bidder when the Star was offered for sale, and planned to resell to the first prospect with whom they were compatible.

91 Ibid., p. 10.

92 U.S. Senate Committee on the Judiciary. . ., Part I, p. 235-36.

93 Ibid., p. 27.

94 Ibid., p. 106.

BEST COPY AVAILABLE

95 Ibid., p. 312.

96 Ibid., p. 203.

97 His emphasis.

98 U.S. Senate Committee on the Judiciary. . ., hearings on S. 1520, p. 690. ("Diversification in Communication," by Richard H. Stehle.)

99 Ibid., p. 698.

100 Parks, "Fold or Combine. . .," p. M30.

101 Barnett, "The Anchorage Failure," p. 42.

102 Ibid.

103 Parks, "Fold or Combine. . .," p. M31.

104 "JOA--A 50-Year Record. . .," p. p. 14.

105 Parks, "Fold or Combine. . .," p. M31.

106 Barnett, "Monopoly Games. . .," p. 41.

107 Parks, "Fold or Combine. . .," p. M31.

108 Barnett, "Monopoly Games. . .," p. 43.

109 Ibid.

110 Pratte, p. 6.

111 Parks, "Fold or Combine. . .," p. M31.

112 Barnett, "Monopoly Games. . .," p. 42.

113 Parks, "Fold or Combine. . .," p. M31.

114 Barnett, "Fast Shuffle. . .," P. 67.

115 Ibid.

116 Committee for an Independent P-I v. Hearst Corp.

117 Barnett, "Monopoly Games. . .," p. 45.

118 Barnett, Stephen R., "Combination Ad Rates," Columbia Journalism Review, May/June 1980, p. 44.

BEST COPY AVAILABLE

119 "Honolulu Drops Anti-trust Suit," Editor and Publisher, May 7, 1983, p. 45.

120 "Honolulu City Council Moves to Settle JOA Suit," Editor and Publisher, April 23, 1983, p. 6.

121 "Honolulu Drops Anti-trust Suit," p. 45.

122 "JOA--A 50-Year Record. . .," p. 14.

123 Ibid., p. 15.

124 Jones, p. 31.

125 "JOA--A 50-Year Record. . .," p. 82. (Shreveport has 24,000 and Charleston has 62,000.)

126 Ibid., p. 82.

127 Barnett, "Monopoly Games. . .," p. 41.

128 Gillmor, p. 210.

129 Pratte, p. 4.

BEST COPY AVAILABLE

BIBLIOGRAPHY

"An Act of Preservation," Advertising Age, July 19, 1982, p. M30.

Associated Press v. United States, 326 U.S. 1, 20.

Bagdikian, Ben H. "The Myth of Newspaper Poverty," Columbia Journalism Review, March/April 1979, p. 23.

Barnett, Stephen R. "The Anchorage Failure," Columbia Journalism Review, May/June 1980, p. 42.

_____. "Combination Ad Rates," Columbia Journalism Review, May/June 1980, p. 4.

_____. "Fast Shuffle in Chattanooga," Columbia Journalism Review, November/December 1980, p. 65-69.

Bogart, Lee. Press and Public. Hillsdale, N.J.: Lawrence Erlbaum Associates, 1981.

Carlson, John H. "Newspaper Preservation Act: A Critique," Indiana Law Journal, v. 46, 1970-71.

Citizen Publishing Co. v. United States, 394 U.S. 131 (1969).

Citizen Publishing Co. et al v. United States, 89 S.Ct. 927, (1969).

Committee for an Independent P-I v. Hearst Corp., 704 F.2d 467 (1983).

Coulson, David C. "Antitrust Law and the Media: Making Newspapers Safe for Democracy," Journalism Quarterly, Spring, 1980, p. 70-85.

Dertouzos, James N., and Thorne, Kenneth E. Newspaper Groups: Economies of Scale, Tax Laws, and Merger Incentives. Published for the U.S. Small Business Administration; Santa Monica, Calif.: Rand Corp., June 1982.

Gillmor, Donald M., and Barron, Jerome A. Mass Communication Law: Cases and Comment. St. Paul, Minn.: West Publishing Co., 1979.

BEST COPY AVAILABLE

Grotta, Gerald. "Prosperous Newspaper Industry May Be Heading for Decline," Journalism Quarterly, Fall '74, p. 498-502.

"Honolulu City Council Moves to Settle JOA Suit," Editor and Publisher, April 23, 1983, p. 86.

"Honolulu Drops Anti-trust Suit," Editor and Publisher, May 7, 1983, p. 45.

"Honolulu JOA Upheld by Judge," Editor and Publisher, Feb. 19, 1983, p. 5.

"JOA--A 50-Year Record of Newspaper Life-Saving," Editor and Publisher, March 13, 1982, p. 14-15, 45.

Jones, Alex S. "Plight of the Weaker Newspapers," The New York Times, Nov. 12, 1983, p. 20, 21.

Levin, Doron. "The Newspaper Business," The Masthead, Fall, 1980, p. 14-22.

"Magazine Man Buys St. Louis Papers," Tuscaloosa News, Dec. 9, 1983, p. 13.

Newspaper Preservation Act, U.S. Public Law 91-353 (1970).

Oppenheim, S. Chesterfield. Newspapers and the Antitrust Laws. Charlottesville, Va.: The Michie Co., 1981.

Parks, Michael. "Fold or Combine: It's a Matter of Dollars," Advertising Age, July 19, 1982, p. M30.

Pratte, Alf. "Tail That Wags the Dog," Grass Roots Editor, July 1983, p. 4-6, 15.

"Purchase Offer Pulled for St. Louis Newspaper," Tuscaloosa (Ala.) News, Jan. 8, 1984, p. 20A.

Quinn, John C. "The Big Myth," Nieman Reports, September 1972, p. 11.

Radolf, Andrew: "32 Dailies Have Merged Since 1978," Editor and Publisher, Sept. 18, 1982, p. 11-12.

Reed, Robert. "Hard Times Force Papers to Merge--or Purge," Advertising Age, July 19, 1982, p. M32.

Seldin, Kathy, Paralegal, Enforcement Office, Antitrust Division, U.S. Department of Justice. A phone conversation, Dec. 1, 1983.

BEST COPY AVAILABLE

The Sherman Antitrust Law, U.S. 26 Stat., 209 (1890).

Stout, Richard T. and Tinkelman, Joseph. "Death in the Big City," The Quill, October 1981, p. 10-14.

Tate, Cassandra. "Gannett in Salem: Protecting the Franchise," Columbia Journalism Review, July/August 1981, p. 51-56.

"29 Cities Left Where Dailies Totally Compete," Editor and Publisher, Sept. 18, 1982, p. 13.

United States House Committee of the Judiciary, anti-trust subcommittee, hearings on H.R. 279, Sept. 10-Oct. 1, 1969.

United States Senate Committee on the Judiciary, subcommittee on antitrust and monopoly, hearings on S. 1520, The Newspaper Preservation Act, June 12, 13, and 20, 1969.

_____, hearings on S. 1312, The Failing Newspaper Act, Part I, July 12, 13, 14, 18, 19, 25, and 26, 1967.

_____, hearings on S. 1312, The Failing Newspaper Act, Part II, July 27 and 28, Aug. 7, 8, 9, 14, and 15, 1967.

_____, hearings on S. 1312, The Failing Newspaper Act, Part III, Appendix.

_____, hearings on S. 1312, The Failing Newspaper Act, Part IV, Articles, Miscellaneous Documents and Cases.

_____, hearings on S. 1312, The Failing Newspaper Act, Part V, Excerpts from hearings on concentration of ownership in news media before the antitrust subcommittee of the Judiciary Committee of the House of Representatives, March 13, 14, and 15, April 9, 1963.

_____, hearings on S. 1312, The Failing Newspaper Act, Part VI, Feb. 27 and 28, March 18, 19, 26, 27, April 16, 1968.

_____, hearings on S. 1312, The Failing Newspaper Act, Part VII, Bev. 27 and 28, March 18, 19, 26, 27, April 16, 1968.

United States Senate, Report No. 91-535 from the Committee on the Judiciary, Nov. 18, 1969.

United States House of Representatives, Report No. 91-1193 from the Committee on the Judiciary, June 15, 1970.

BEST COPY AVAILABLE

Wollert, James A. "Antitrust and the Media: the NCCB Decision," an unpublished paper, University of Iowa.

Young, Patrick. "Newspapers Win Their Long Fight to Pool Some Operating Facilities," National Observer, July 13, 1970.

JOINT NEWSPAPER OPERATING ARRANGEMENTS

City	Signed	Newspapers	Daily Circ.	Owner
Albuquerque, N.Mex.	1933	Journal (mS)	00,000	Ind.
		Tribune (e)	[illegible],000	Scripps-H
El Paso, Texas	1936	Times (mS)	[illegible],000	Gannett
		Herald-Post (e)	32,000	Scripps
Nashville, Tenn.	1937	Tennessean (mS)	124,000	Gannett
		Banner (e)	73,000	Ind.
Evansville, Ind.	1938	Courier (m)	64,000	Ind.
		Press (e)	43,000	Scripps
Tucson, Ariz.	1940	Daily Star (mS)	81,000	Pulitzer
		Citizen (e)	63,000	Gannett
Tulsa, Okla.	1941	World (mS)	130,000	Ind.
		Tribune (e)	75,000	Ind.
Madison, Wis.	1948	State Journal(mS)	76,000	Lee
		Capital Times (e)	32,000	Ind.
Bristol, Tenn.	1950			
Lincoln, Neb.	1950	Journal (e)	[illegible],000	Ind.
		Star (m)	33,000	Lee
Fort Wayne, Ind.	1950	News-Sentinel (e)	66,000	Knight-R
		Journal-Gaz. (mS)	[illegible],000	Ind.
Birmingham, Ala.	1950	News (eS)	164,000	Newhouse
		Post-Herald (m)	66,000	Scripps-H
Salt Lake City, Utah	1952	Tribune (mS)	112,000	Ind.
		Deseret News (eS)	70,000	Ind.
Shreveport, La.	1953	Times (mS)	80,000	Gannett
		Journal (e)	30,000	Ind.
Franklin/Oil City, Pa.	1956	Derrick (m)	16,000	Ind.
		News-Herald (e)	9,000	Ind.
Knoxville, Tenn.	1957	News-Sentinel (eS)	100,000	Scripps-H
		Journal (m)	59,000	Gannett
St. Louis, Mo.	1957	Globe-Democrat (m)	260,000	Newhouse
		Post-Dispatch (eS)	236,000	Pulitzer

BEST COPY AVAILABLE

Charleston, W.Va.	1958	Gazette (mS)	54,000	Ind.
		Daily Mail (e)	54,000	Clay
Columbus, Ohio	1959	Dispatch (eS)	201,000	Ind.
		Citizen-Journal (m)	119,000	Scripps-H
Pittsburgh, Pa.	1961	Press (eS)	260,000	Scripps-H
		Post-Gazette (m)	182,000	Block
Honolulu, Hawaii	1962	Star-Bulletin (e)	112,000	Gannett
		Advertiser (mS)	83,000	
San Francisco, Calif.	1964	Chronicle (mS)	538,000	Ind.
		Examiner (eS)	157,000	Hearst
Miami, Fla.	1966	Herald (mS)	417,000	Knight-R
		News (e)	60,000	Cox
Anchorage, Alaska	1974	Daily News (mS)	47,000	McClatchy
		Daily Times (eS)	45,000	Ind.
Cincinnati, Ohio	1979	Enquirer (mS)	192,000	Gannett
		Post (e)	143,000	Scripps-H
Chattanooga, Tenn.	1980	News-Free Press (e)	59,000	Ind.
		Times (m)	46,000	Ind.
Seattle, Wash.	1982	Times (all day S)	253,000	Ind.
		Post-Intelligencer (mS)	183,000	Hearst

Sources: Carlson, John H., "Newspaper Preservation Act: A Critique," Indiana Law Journal, v. 46, 1970-71.
Jones, Alex S., "Plight of the Weaker Newspapers," New York Times, Nov. 12, 1983.
Editor and Publisher Directory of Newspapers, 1983.

BEST COPY AVAILABLE

Public Law 91-353

AN ACT

July 24, 1970
[S. 1520]

To exempt from the antitrust laws certain combinations and arrangements necessary for the survival of failing newspapers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Newspaper Preservation Act.

SECTION 1. This Act may be cited as the "Newspaper Preservation Act".

DECLARATION OF POLICY

SEC. 2. In the public interest of maintaining a newspaper press editorially and reportorially independent and competitive in all parts of the United States, it is hereby declared to be the public policy of the United States to preserve the publication of newspapers in any city, community, or metropolitan area where a joint operating arrangement has been heretofore entered into because of economic distress or is hereafter effected in accordance with the provisions of this Act.

DEFINITIONS

SEC. 3. As used in this Act—

38 Stat. 717.
15 USC 58.
52 Stat. 111.

(1) The term "antitrust law" means the Federal Trade Commission Act and each statute defined by section 4 thereof (15 U.S.C. 44) as "Antitrust Acts" and all amendments to such Act and such statutes and any other Acts in pari materia.

(2) The term "joint newspaper operating arrangement" means any contract, agreement, joint venture (whether or not incorporated), or other arrangement entered into by two or more newspaper owners for the publication of two or more newspaper publications, pursuant to which joint or common production facilities are established or operated and joint or unified action is taken or agreed to be taken with respect to any one or more of the following: printing; time, method, and field of publication; allocation of production facilities; distribution; advertising solicitation; circulation solicitation; business department; establishment of advertising rates; establishment of circulation rates and revenue distribution: *Provided*, That there is no merger, combination, or amalgamation of editorial or reportorial staffs, and that editorial policies be independently determined.

(3) The term "newspaper owner" mean any person who owns o controls directly, or indirectly through separate or subsidiary corporations, one or more newspaper publications.

(4) The term "newspaper publication" means a publication produced on newsprint paper which is published in one or more issue weekly (including as one publication any daily newspaper and an Sunday newspaper published by the same owner in the same city, community, or metropolitan area), and in which a substantial portion o the content is devoted to the dissemination of news and editorial opinion.

(5) The term "failing newspaper" means a newspaper publicatio which, regardless of its ownership or affiliations, is in probable dan ger of financial failure.

(6) The term "person" means any individual, and any partnership corporation, association, or other legal entity existing under or au thorized by the law of the United States, any State or possession o the United States, the District of Columbia, the Commonwealth o Puerto Rico, or any foreign country.

BEST COPY AVAILABLE

ANTITRUST EXEMPTION

SEC. 4. (a) It shall not be unlawful under any antitrust law for any person to perform, enforce, renew, or amend any joint newspaper operating arrangement entered into prior to the effective date of this Act, if at the time at which such arrangement was first entered into, regardless of ownership or affiliations, not more than one of the newspaper publications involved in the performance of such arrangement was likely to remain or become a financially sound publication: *Provided*, That the terms of a renewal or amendment to a joint operating arrangement must be filed with the Department of Justice and that the amendment does not add a newspaper publication or newspaper publications to such arrangement.

(b) It shall be unlawful for any person to enter into, perform, or enforce a joint operating arrangement, not already in effect, except with the prior written consent of the Attorney General of the United States. Prior to granting such approval, the Attorney General shall determine that not more than one of the newspaper publications involved in the arrangement is a publication other than a failing newspaper, and that approval of such arrangement would effectuate the policy and purpose of this Act.

(c) Nothing contained in the Act shall be construed to exempt from any antitrust law any predatory pricing, any predatory practice, or any other conduct in the otherwise lawful operations of a joint newspaper operating arrangement which would be unlawful under any antitrust law if engaged in by a single entity. Except as provided in this Act, no joint newspaper operating arrangement or any party thereto shall be exempt from any antitrust law.

PREVIOUS TRANSACTIONS

SEC. 5. (a) Notwithstanding any final judgment rendered in any action brought by the United States under which a joint operating arrangement has been held to be unlawful under any antitrust law, any party to such final judgment may reinstitute said joint newspaper operating arrangement to the extent permissible under section 4(a) hereof.

(b) The provisions of section 4 shall apply to the determination of any civil or criminal action pending in any district court of the United State on the date of enactment of this Act in which it is alleged that any such joint operating agreement is unlawful under any antitrust law.

SEPARABILITY PROVISION

SEC. 6. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this Act, and the applicability of such provision to any other person or circumstance, shall not be affected thereby.

Approved July 24, 1970.

BEST COPY AVAILABLE